1912-13

Courts

F No- 339-12-13

S. L. No- 1-6

Draft Rules under the Mysore Insolvency Regulation

G. R. S. 58
Previous references.

File No. 339-12-13

1912. 13
(Courts)

Serial Nos. 1-6

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1—6.

Part B. for Feb 14

SUBJECT.

Draft rules under the Mysore Insolvency Regulation.

---

1. From The Registrar Chief Court 4232/326 Of 12/13 16/13
Forwards for sanction the above rules.

2. To The Same Officer J 209 Of 22/7/1913
Calls certain enquiries with ref to the rules.

3. From The Registrar Chief Court 1340 Of 10/7/13
Furnishes the opinion of the 10 Judges in regard to the enquiries made above.

4. To The Same Offr 2012 Of 17/1/14.
Sanction the rules.

P. T. O

GPB/8,000—7-4-07

28.8.14

5- From The Same Office, 2844 Of 21/1/1914

States that in anticipation of the approval
of Govt the date of operation of the rules
has been fixed as first march 1914 235

6. To The Same Office 2224 Of 6/2/14

Approves of the action taken by
the Chief Court.

No. C. 96/Cue. 2 books.

1. 11. 1913.

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT

Draft rules under the Mysore Insolvency Regulation.

CIRCULATED TO COUNCILLORS.

By Order,

1st November 1913.

Secretary to Government.

First Councillor.

Seen by First Councillor.

Second Councillor.

G.R.S. 15]

2

Facing sheet for cases included in the schedule appended to Notification No. 36 of the 8th Aug. 1902.

GENERAL AND REVENUE SECRETARIAT.

Draft rules under the Mysore Insolvency Regulation.

Subject–

	Date	Initial of Officer himself or responsible Deputy.
Received in the Secretariat		
Submitted to Secretary		
Submitted by Secretary to Dewan or Councillor in charge		
Returned to Secretary		
Circulated by Secretary for Council	1. 11. 13.	
Forwarded by Councillor		
Forwarded by Councillor		
Received in Secretariat		
Considered in Council		
Submitted to the Dewan		
Submitted to His Highness		
Orders passed by His Highness		
Final Orders issued		
Circulated to Councillors		
Passed on by the Councillor		
Returned to Secretary by Councillor		

GPB—3,000—19-4-10

3614

G.R.S. 11] 1912.

GENERAL AND REVENUE SECRETARIAT.

(Coorg)

NOTES.

File No. 339 of 1912-13

FILE HEADING.

Rules under the Mysore Insolvency Regulation VI of 1911

From

The Resident, Chief Court

No. 4222/326 Dated 12/13-6-13 Received 16.6.13

Diary No.	Enclos.	Spare Copies.	Serial No.
J 3614	1		1

BRIEF ABSTRACT OF LETTER.

Forwards for sanction & Govt a set of rules framed by the Chief Court under Sec" 57 of the Insolvency Regulation.

NOTES AND ORDERS.

The Chief Court suggest that the rule may be brought into force with effect from the 1st Oct 1913, if not from the 1st July 1913.

2 Subd with a copy of the Insolvency Regulation.

KS-129 CW 25/6/13

3 The rules proposed rules are

GPB—30,000—12-8-11

G. R. S. 12]

General and Revenue Secretariat. | Ch. File No. 389 of 1912-3

Serial No.

mostly taken from the rules in force in British India & may be approved

4 They may be brought into force from 1st October 1913 as 1st July is too near a date They will have to be published in the Gazette. ~~before they~~ Clause 3 Sec 51 of the Reg

Dr Lee 1

(Sr Commr Aller)

SPR 26/6

D.M. Naraghar Sp

5 I have noted one or two ~~points~~ points of doubt in pencil on the Copy of the rules Please let me have further explanation on these matters & if necessary the Bh. Court may be Consulted unofficially or otherwise

(Jenkins) 4/7/13

4

Ch 7/7/13

6 The three points on which

NOTE—Contn. sheet.

(G. R. S. 12)

General and Revenue Secretariat. | File No. 339 of 1912

Serial No.

the Trial Cr wants further explanation are

(1) Whether Rule X is necessary, in view of the provn contained in Sec. 23 itself

(2) Whether Rule XXXI (4) making provision for the deposit of Rs 150 by a Creditor is right in principle & whether it is not ultra vires

(3) Whether Rule XXXII making provn for a partial bar application of the principle of res judicata is valid

7) The Chief Court may be consulted now on these points, as directed by the Cr J

Dr Seen) SPM 15/7

8) Draft Dmm 17/7

9) Draft to Hon Registrar, Chief Court, Sub: Reg-129 SM 17.7.13 18/7 ✓ approval

No consultation seems practicable

Dr Seen) SPM 18/7

10) Draft may be issued

18.7.13.

*The office is not able to give complete explⁿ on both the three points SPM

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

(G. R. S. 12)

General and Revenue Secretariat.

His File No. 339 of 1912

Serial No.	
2	To The Registrar, Chief Court No J-209 D 22.7.13 Makes certain enquiries with refce to the Rules.
3	From The Registrar, Chief Court No 1340/109 D 16th Sep 1913 Furnishes the opinion of the judges in regard to the enquiries made above. (1) Subd with the Books noted in the margin. These rules are now proposed to be brought into force from the 1st Jan 14. KG. 116 / 20.9.13 MM
	(2) The Judges do not press for the retention of draft Rule XXX (4) regarding the deposit. The other two rules are considered necessary, the latter viz rule XXXII being redrafted Dy Secy / (1st cancelled) SDR 22/9 Dy Secy 23/9/13
	(3) Accept the present proposals. The rules may come into force from 1st January 1914.

Indian Insolvency Act - 1890 to Halis Imps Laws of Eng'and SK Branch
✦ Vol II
6✦ Allahabad
+ the Mysore Insolvency Rules

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Urgent

(G. R.-S. 12)

C 7

General and Revenue Secretariat.

File No. 2614 339 of 1912-13

Serial No.

14) I believe this is a Council case. The file may be circulated

27/10/13

25/10

To Council Section for circulation SPM 31/10

15) seen

4/11

6/11

1) Laws of England No 2

2) D.L.R. Alk. VI detached 4/11/13

6-1-45

18/11/13

Dewan 7/11

16) A draft Submission Note is also put up. Dewan 26/11

6233

26-11-13

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

8

Submitted to His Highness.

2 17 Under Section 51 of the Mysore Insolvency Regulation, the Chief Court framed a set of draft rules and solicited the approval of Government thereto as required by law. At the suggestion of the First Councillor the further views of the Chief Court regarding Rules X, XXXI (4) and XXXII were called for. The Chief Court urge the retention of Rule X and agree to the omission of Clause 4 of Rule XXXI and also to the amendment of Rule XXXII as redrafted by them.

Paper under disposal.

18 2. The rules as revised are approved by the Councillors and may be duly published and brought into force with effect from the 1st February 1914. The rules may be graciously sanctioned by His Highness.

P

M. Vishvesvaraya -
16 Dec. 1913.

9

Record of Cases submitted for the Orders of His Highness the Maharaja

No 130.
Vol XII

Subject.

Draft rules under the Mysore Insolvency Regulation.

No. 1964
18.12.13

W. 495

Order.

19 Sanctioned
KRW
18|12|13

Secretary
18-12-13

19/12/13

B III
20/12

20/12

20.12.13

20.12.13

P.T.O.

1005

10

G. R. S. 12]

General and Revenue Secretariat.

File No. 339 of 1912-13

Serial No.

10 Draft order sanctg the rules & Subs. May the copy of the rules recd from the Chief Court be returned or may another copy of the rules as amended be typed and sent to the Chief Court if a copy has to go there at all?

Kg.-116

20/12/13 Ml M A clean typed copy of the rules as finally altered may be sent with the proposal for sanctioning them to the Press & proper may be added

22 H. Wells

Dy Secy 22 Approved.

Draft 23/12

23 Issue H. Wells 23/12

To The Typg Sec^h

Please see Asst Secy's note above. The Rules Hqrs Shd have to be typed

4 Read 12/1/14 4.25 p m

Pd 14/1

4 To The Registrar Chief Court

No. J 2012 Dy 17-1-1914

Sanction the rules as revised and amended by the Chief Court and State that they may be duly published & brought into force with effect from the 1st Feb 1914.

5 From the Secretary

No. 2844/235 Dy the 21st Jan 1914

State that in anticipation of the approval of Govt, the date of operation

NOTE—Contn. sheet.

GPE—65,000—17-6-12.

F. R. S. 12]

General and Revenue Secretariat.

C5 File No. 339 of 1912-13

Serial No.

A the rules has been fixed as 1st Mar 1914 to permit of their previous publication in the Mysore Gazette.

My Subd with a draft approving

Leg.-116
30/1/1914 NR

1st member) 30/1

Draft appd. by First member 31.1.14

30/1

2/2 Issue 2/2

6 To. The Registrar, Chief Court.
No. J2224 Dt 6-2-14
Approving the action taken by the Chief Court, in postponing the operation of the rules under the Insolvency Regulation

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

No: 4222/326 See one file

Chief Court of Mysore,

Bangalore, dated 12th June 1913.

13½:

DIARY No. J 8614

1912-1913
SECTION Courts
FILE No. 339 of 1912-13
SERIAL No. 1

From,

The Registrar of the
Chief Court of Mysore,
B a n g a l o r e

To,

The Secretary to Government,
General and Revenue Departments.

Sir,

I am directed to forward for the sanction of Government the accompanying rules made by the Chief Court under section 51 of the ~~Mysore~~ Mysore Insolvency Regulation (VI of 1911)

2. In preparing these rules, the rules in force in Bombay and Madras (which are nearly identical) have been consulted as well as those of Bengal and North West Provinces (which are also to all intents and purposes identical with each other and cover the same ground as the Bombay and Madras rules).

3. The marginal references will show the source from which each rule has been taken. The only alterations in the wording of the rules which are not of a verbal character and to which attention may perhaps be drawn are those underlined in red ink in rules XXII and XXIX (v), the reasons for which, however, are obvious.

4. I am to suggest that, if it is not possible to fix the 1st July 1913, the 1st October 1913 may be fixed as the date from which the rules are to come into force. Previous publication of the draft rules not being necessary, neither of the two dates mentioned above is, in the opinion of the Judges,

too

Encl to Cf 339-12-1

DRAFT.

THE MYSORE INSOLVENCY RULES, 1913.

By virtue of the provisions of Section 51 of the Mysore Insolvency Regulation, VI of 1911, and of all other powers thereunto enabling, the Chief Court of Mysore has with the previous sanction of the Government of Mysore made the following rules for carrying into effect the provisions of the said Regulation:-

Bom. 1.
Mad. 1.

I. These Rules may be called "The Mysore Insolvency Rules, 1913", and shall apply to all proceedings under the Mysore Insolvency Regulation, 191 in any Court subordinate to the Chief Court of Mysore They shall come into force on the ~~1st day of January 1914~~ and shall apply to all proceedings thereafter instituted and, as far as may be, to all proceedings then pending.

Bom. 2.
Mad. 2.
Cal. 1.
N.W.P. 22.

II. The forms mentioned in these rules are the forms in the Appendix hereto and shall be used with such variations as circumstances may require.

Bom. 3.(1)
Mad. 3.

III. (1) In these rules unless there is anything repugnant in the subject or context,

" the Regulation " means the Mysore Insolvency Regulation, VI of 1911;

" the Court " includes a Receiver when exercising the powers of the Court in accordance with Section 52 of the Regulation;

" Receiver " means a Receiver appointed by the Court under Section 18 (1) of the Regulation;

" Interim Receiver " means a Receiver appointed by the Court under Section 13 (2) of the Regulation

proved debt " means the claim of a creditor so far as it has been admitted by the Court.

Bom. 2. (2) Save as otherwise provided all words and expressions used in these Rules shall have the same meaning as those assigned to them in the Regulation.

PETITIONS.

Bom. 4(1) Cal. 2. N.W.P. 2. Mad. 4(2). IV. (1) Every insolvency petition shall be entered in the Register of Insolvency Petitions to be maintained in all Courts exercising Insolvency Jurisdiction and shall be given a serial number in that Register, and all subsequent proceedings in the same matter shall bear the same number.

Bom. 4(2). Mad. 4(1). (2) Every petition, application, affidavit or order in any proceeding under the Regulation or under these Rules shall be headed by a cause-title in Form No. 1.

Bom. 5(1). Mad. 5. V. (1) When an insolvency petition presented by a creditor is admitted, the creditor shall within seven days thereafter furnish a copy of the petition for service on the debtor or, if there are more than debtors than one, as many copies as there are debtors and the chief ministerial officer of the Court shall sign the copy or copies if on examination he finds them to be correct.

Bom. 5(2 (2) The copy shall be served together wi the notice of the order fixing the date for hearing the petition on the debtor or upon the person upon whom the Court orders notice to be served.

Bom. 6.
Cp. Mad. 6.

VI. A debtor's petition shall be in Form No. 2 and a creditor's petition shall be in Form No. 3.

Bom. 7.
Mad. 7.

VII. If a debtor against whom an insolvency petition has been admitted dies before the hearing of the petition, the Court may order that notice of the order fixing the date for hearing the petition shall be served on his legal representative or on such other person as the Court may think fit in a manner provided for the service of summons.

PROOF OF DEBTS

Bom. 8(1).
Mad. 8.
Cp. Cal. 15.
N.W.P. 15.

VIII. (1) Unless otherwise ordered, all claims shall be proved by affidavit in Form No. 7 in the manner provided in Section 25 of the Regulation, provided that before admitting any claim the Court may call for further evidence.

Bom. 8(2).

(2) The affidavit may be made by the creditor or by some person authorised by him, provided that if the deponent is not the creditor, the affidavit shall state the deponent's authority and means of knowledge.

Bom. 8(3).

(3) As soon as may be after proof of any debt is tendered the Court shall by order in writing admit the creditor's claim in whole or in part or reject it, provided that when a claim is rejected in whole or in part the order shall state briefly the reasons for the rejection.

Bom. 8(4).

(4) A copy of every order rejecting a claim, or admitting it in part only, shall be sent

by

by the Court by ~~Re~~ registered post to the person making the claim within seven days from the date of the order.

Bom. 9.
Cal. 16.
N.W.P. 16.

IX. In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor, or by some other person on behalf of all such creditors. Such proof should be in Form No. 8.

~~Cal. 16A.~~

SALE OF IMMOVEABLE PROPERTY OF INSOLVENT.

Cal. 16A.

X. If no Receiver is appointed and the Court in exercise of its powers under section 23 of the Regulation, sells any immoveable property of the insolvent, the deed of sale of the said property shall be prepared by the purchaser at his own cost, and shall be signed by the presiding officer of the Court.

SCHEDULE OF CREDITORS.

Bom. 10.
Mad. 9.

XI. As soon as the schedule of creditors has been framed a copy thereof, shall, if a Receiver has been appointed, be supplied to him, and all subsequent entries and alterations made therein shall be communicated to the Receiver.

SCHEMES.

Bom. 11(1).
Mad. 10.

XII. (1) If a debtor submits a proposal under Section 27 (1) of the Regulation, the Court shall fix

fix a date for the consideration of the proposal and notice thereof together with a copy of the terms of the proposal shall be sent to every creditor who has proved.

Bom. 11(2) (2) At the meeting for the consideration of the proposal the debtor shall be entitled to address the Court in person or by pleader in suppor of the proposal and every creditor who has proved shall be entitled in person or by pleader to question the debtor and to address the Court.

RECEIVERS.

Cal. 10. XIII Every appointment of a Receiver shall be by order in writing signed by the Court. Copies of this order sealed with the seal of the Court ~~should~~ shall be served on the debtor. and forwarded to th person appointed.

Bom. 12(1). Mad. 11. XIV. (1) Every Receiver or interim Receiver other than an Official Receiver shall be required to give such security as the Court thinks fit.

Bom. 12(2). (2) The Court shall not require an Official Receiver to give security.

Bom. 13. Mad. 12. XV. The Court may remove or discharge any Receiver other than an Official Receiver, and any Receiver or interim Receiver so removed or discharged shall, unless the Court otherwise orders, deliver up any assets of the debtor in his hands and any books, accounts or other documents relating to the debtor's property which are in his possessio or under his control to such person as the Court may direct.

Bom. 13 (2).

(2) If an order of adjudication is annulled, the Receiver (if any) shall, unless the Court otherwise orders, deliver up any assets of the debtor in his hands and any books, accounts or other documents relating to the debtor's property which are in his possession or under his control to the debtor or such other person as the Court may direct.

Bom. 14, Mad. 13.

XVI. Every Receiver or interim Receiver shall be deemed for the purpose of the Regulation and of these Rules to be an officer of the Court.

Bom. 15(1).

XVII. (1) Every application to the Court made by a Receiver or an interim Receiver shall be in writing.

Bom. 15(2) Mad. 14.

(2) The Court may order that notice of any application by the Receiver and of the date fixed for the hearing of the application shall be sent by registered post to all creditors who have proved.

Bom. 16(1). Mad. 15. Cp. Cal. 11. N.W.P. 11.

XVIII. (1) The remuneration of Receivers other than Official Receivers shall be in such proportion to the amount of the dividends distributed as the Court may direct, provided that it does not exceed five per centum of the amount of the dividends.

Bom. 16(2)

(2) If a Receiver other than the Official Receiver has been appointed in an Insolvency in which the Court makes an order approving a proposal under Section 27(7) of the Regulation, the remuneration to be paid to the Receiver shall be fixed by the Court, and the order approving the proposal shall make provision for the payment of the remuneration and shall be subject to the pay-

payment thereof.

Bom. 17.
Cp. Mad. 16(1) which unnecessarily repeats the clauses in Sec. 44(3)

XIX. The Receiver in making his report shall state whether in his opinion any of the facts mentioned in Section 44 (Sub-Section (3) of the Regulation exist and if the debtor makes a proposal under Section 27 (1) of the Regulation, the Receiver shall state in his report whether in his opinion the proposal is reasonable and is likely to benefit the general body of the creditors and shall state the reasons for his opinion.

Mad. 16(2).

Bom. 18.
Mad. 17.

XX. If the Court directs, the debtor shall furnish the Receiver or, if a Receiver has not been appointed, the Court, with a trading account, and an account showing all moneys and securities paid, disposed of or encumbered, or recovered by or from the debtor or on his account and his income and the source thereof for such period as the Receiver or, if a Receiver has not been appointed, the Court, may direct, provided that the Receiver shall not without the previous sanction of the Court direct the debtor to furnish accounts for more than two years before the date of the presentation of the insolvency petition.

Bom. 19.
Mad. 18.
Cal. 12.
N.W.P. 12.

XXI. The Receiver shall keep a cash book and such books and other papers as are necessary to give a correct view of his administration of the estate, and shall submit his accounts at such times and in such forms as the Court may direct. Such accounts shall be audited by such person or persons as the Court may direct. The costs of the audit shall be fixed by the Court and shall be paid out of the estate.

Bom. 20.

XXII. The Official Receiver shall deposit all valuable securities for safe custody with the Nazir and whenever a sum exceeding Rs. 500/- shall stand to the credit of any one estate, the Official Receiver shall give notice thereof to the Court, and unless it shall appear that a dividend is about to be immediately declared, he shall obtain the Court's order to invest the same in the Mysore Government Savings Bank or some security approved by Government.

DIVIDENDS.

Bom. 21.
Mad.19(1).

XXIII. No dividend shall be distributed by a Receiver without the previous sanction of the Court.

[s. 19(2) has not been reproduced as unnecessary]

Bom. 22.
Cal. 17.
N.W.P.17.

XXIV. The amount of the dividend may at the request and risk of the creditor be transmitted to him by post.

DISCHARGE.

Bom. 23(1).
Mad. 20.

XV. (1) An application for discharge shall not be heard until after the schedule of creditors has been framed.

Bom. 23(2).

(2) Every creditor who has proved shall be entitled in person or by pleader to appear at the hearing and oppose the discharge, provided that he has served upon the insolvent and upon the Receiver (if any) not less than 7 days before the date fixed for the hearing a notice stating the ground of his opposition to the discharge.

(7)

Bom. 23(3).

(3) A creditor who has not served the prescribed notices shall not, unless the Court otherwise directs, be permitted to oppose the discharge of the debtor; and a creditor who has served the prescribed ~~xx~~ notices shall not be permitted, unless the Court otherwise directs, to oppose the discharge on any ground not specified in the notice.

Bom. 23(4).

(4) At the hearing of the application the Court may hear any evidence which may be ~~xxxx~~ tendered by a creditor who has served the ~~xxxxx~~ prescribed notices, or by the Receiver, and also a any evidence which may be tendered on behalf of the debtor and shall examine the debtor, if necessary, for the purpose of explaining any evidence tendered and may hear the Receiver, the debtor, in person or by pleader, and any creditor, in person or by pleader, who has served the prescribed notice.

NOTICES.

Cal. 4.

XXVI. Whenever publication of any notice or other matter is required by the Regulation to be made in the official Gazette, a memorandum referring to and giving the date that such advertisement appeared, shall be filed with the record and noted in the order sheet.

Bom. 24(1).
Mad. 21.
Cp. Cal. 4 to 9.
and
N.W.P.4 to 9.

XXVII. (1) The notices to be given under Sections 12(2), 16(6), 27(1), 39(4), 42(3) and 44(1) of the Regulation shall be published in the Mysore Government Gazette, in English and in Kanarese, and, if the Court so directs, in one

12

English and one Vernacular newspaper, and copies of the notices in English and in Kanarese shall be affixed to the Notice-board of the Court.

Cal. 6. When the debtor is a Government servant a copy of the order shall be sent to the head of the office in which he is employed.

Bom. 24(2). (2) The notices to be given under Sections 12(2), 27(1), 39(4) and 44(1) of the Regulation shall be published and affixed in the manner provided in paragraph (1) of this Rule not less than 14 days before the date fixed for the hearing of the application, the consideration of the proposal, the limit of time fixed for proving claims or the hearing of the application for discharge as the case may be.

Bom. 24(3). (3) Notice of the date fixed for the hearing of an insolvency petition under Section 12(1) of the Regulation shall be sent by the Court by registered post, if the petition is by the debtor, to all creditors mentioned in the petition and if the petition is by a creditor, to the debtor, not less than 14 days before the said date.

Bom. 24(4). Cp.Cal. 14. N.W.P. 14. (4) Notice of the date fixed for the consideration of a proposal under Section 27(1) of the Regulation shall be sent by the Court by registered post to all creditors who have tendered proof of their debts not less than 14 days before the said date.

Bom. 24(5). (5) Notice of the date fixed for the hearing of an application for discharge under Section 44(1) of the Regulation shall be despatched by

by the Court by registered post to all persons whose names have been entered in the schedule of creditors not less than 14 days before the said date.

Bom. 24 (6). (6) The notice to be given under Section 39(4) of the Regulation shall be sent by the Receiver by registered post to all persons whose claims to be creditors have been notified but not proved not less than one calendar month before the limit of time fixed for proving claims.

Bom. 24(7). (7) The notice to be given under Section 24(3) of the Regulation shall be served only on the debtor and on the creditors whose names appear in the schedule of creditors and may, if the Court so directs, be served on any or all such creditors by registered post.

Bom. 24(8). (8) It shall not be necessary to give notice of the date to which the hearing of a petition or of an application for discharge or the consideration of a proposal is adjourned.

Cal. 9. XXVIII. A certificate of an officer of the Court or of the Official Receiver, or an affidavit by a Receiver that any of the notices referred to in the preceding rules has been duly posted, accompanied by the post office receipt, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

SUMMARY ADMINISTRATION.

14

SUMMARY ADMINISTRATION.

Bom. 25.
Cp. Mad. 23.
Cal. 18.
N.W.P. 18.

XXIX. When an estate is ordered to be administered in a summary manner under Section 43 of the Regulation, the provisions of the Regulation and ~~the~~ rules shall, subject to any special direction of the Court, be modified as follows, namely :

(i). There shall be no advertisement of any proceeding in a local paper.

(ii) The petition and all subsequent proceedings shall be endorsed "Summary Case".

(iii) The notice of the hearing of the petition to the creditors shall be in Form No. 13.

(iv) The Court shall examine the debtor as to his affairs but shall not be bound to call a meeting of creditors, but the creditors shall be entitled to be heard and to cross-examine the debtor.

(v) The appointment of a Receiver may, at the discretion of the Court, be dispensed with, and the Court may act under Section 23 of the Regulation in order to reduce the cost of the proceed-

IMPRISONMENT.

Bom. 26.
Cal. 19.
N.W.P. 19.

XXX. Before sentencing a debtor under the powers conferred by Section 43 clause (2), the shall call on the debtor to shew cause why an/

should not be passed against him under that Section.

COSTS.

Bom. 27(1).
Cal. 20.
N.W.P. 20.

XXXI. (1) All proceedings under the Regulation down to and including the making of an order of adjudication shall be at the cost of the party prosecuting them; but when an order of adjudication has been made, the costs of the petitioning creditor shall be taxed and be payable out of the estate.

Bom. 27(2).

(2) Before making an order in an insolvency petition presented by a debtor the Court may require the ~~xx~~ debtor to deposit in Court a sum sufficient to cover the costs of sending the prescribed notices of the hearing of petition.

Bom. 27(3).
Cal. 21.
N.W.P. 21.

(3) No costs incurred by a debtor of, or incidental to, an application to approve a composition or scheme shall be allowed out of the estate if the Court refuses to approve the composition or scheme.

Bom. 27(4).

(4) Whenever a creditor presents an insolvency petition he shall deposit in Court the sum of Rs. 150/- to cover expenses. Such deposit shall be paid out of the first available assets realised.

FRESH PETITION.

Bom. 28.

XXXII. No insolvent who has had his petition dismissed shall be allowed to present a fresh

liberately creates
no bar of res judi
cata. Is this provn
of a partial bar
invalid?

XXXII. No fresh petition by a debtor whose insolvency petition has been dismissed shall be entertained by the Court unless the petitioner satisfies the court that he has good grounds for presenting such fresh petition, - and without previous notice to the opposing creditors.

may stand as amended in the letter

INSPECTION OF PROCEEDINGS.

Bom. 29.
Cal. 3.
N.W.P. 5.

XXXIII. All insolvency proceedings may be inspected at such times and subject to such restrictions as the Court may prescribe, by the Receiver, the debtor, any creditor who has proved or any legal representative on their behalf.

Cal. 13.

XXXIV. Any creditor who has proved his debt may apply to the Court for a copy of the Receiver accounts (or any part thereof) relating to the estate, as shown by the cash book up to date, and shall be entitled to such copy on payment of the charges laid down in rules of this Court regarding the grant of copies.

PLEADERS' FEES.

Bom. 30.

XXXV. The fees allowed to pleaders as costs in any proceedings under the Regulation shall be such as are allowed under the rules of the Court for a miscellaneous proceeding.

N.G.

(Here enter Appendix)

F O R M No.1.

General Title.

In the Court of

Insolvency Petition No. of 19

In the matter of

Ex parte (here insert "the Debtor" or "A.B. or creditor" or "the Official Receiver" or "the Receiver."

------O-------

F O R M No.2.

Debtor's Petition

(Title)

I (a) oridinarily residing at, (or "carrying on business at", or "personally working for gain at", or "in custody at") in consequence of the order of (b) being unable to pay my debts, hereby petition petition that I may be adjudged an insolvent. The total amount of all pecuniary claims against me is Rs. (c) as set out in detail in Schedule A annexed hereunto, which contains the names and residences of all my creditors so far as they are known to, or can be ascertained by me. The amount and particulars of all my property are set out in Schedule B annexed hereunto together with a specification of all my property, not consisting of money, and the place or places at which such property is to be found and I hereby declare that I am willing to place all such property at the disposal of the Court save in so far as it includes such particulars (not being my books of account) as are exempted by law from attachment and sale in execution of a decree.

(a) Insert name and address and description of debtor.

(b) State name of Court and particulars of decree in respect of which the order of detention has been made or by which an order of attachment has been made against debtor's property.

(c) State whether, and how any of the debts are secured.

(Signature)

(Verification clause as in plaints).

F O R M No. 3.

Creditor's Petition.

(Title)

I, C.D., of (or We C.D., of and E.F., of) hereby petition the Court that A.B. (a) ordinarily residing at, (or "carrying on business at ", or "personally working for gain at ",) may be adjudged an insolvent and say:-

(a). Insert name, address and description of debtor.

1. That the said A.B. is justly and truly indebted to me (or us in the aggregate) in the sum of Rs. (set out amount of debt or debts, and the consideration).

2. That I (or we) do not, nor does any person on my (or our) behalf hold any security on the said debtor's estate, or any part thereof, for the payment of the said sum.

O r,

That I hold security for the payment of (or part of) the said sum (but that I will give up such security for the benefit of the creditors of the said A.B. in the event of his being adjudged insolvent) (or. and I estimate the value of such security at the sum of Rs.

O r,

That I, C.D., one of your petitioners, hold security for the payment of, etc.

That I, E.F., another of your petitioners, hold security for the payment of, etc.

3. That the said A.B. within 3 months before the date of the presentation of this petition has committed the following act (or acts) of insolvency, namely, (here set out the nature and date or dates of the act or acts of insolvency relied on).

(S i g n a t u r e).

(Verification clause as in plaints.)

F O R M No. 4.

Notice to creditors of the date of hearing of an insolvency petition -- Section 12.

Whereas A.B. has applied to this Court, by a petition, dated of 19 , to be declared an insolvent under the Mysore Insolvency Regulation (VI of 1911), and your name appears in the list of creditors filed by the aforesaid debtor, this is to give you notice that the Court has fixed the day of 19 for the hearing of the aforesaid petition and the examination of the debtor. If you desire to be represented in the matter you should attend in person or by a duly instructed pleader. The particulars of the debt alleged in the petition to be due to you, are as follows:-

Dated this day of 19

J u d g e.

FORM No. 5.

Order of Adjudication.- Section 16.

(Title).

Pursuant to a petition dated against (here insert name, description, and address of debtor) and on the application of (here insert "the Official Receiver" or "the debtor himself" or "A.B. of a creditor") and on reading and hearing it is ordered that the debtor be and the said debtor is hereby adjudged insolvent

Dated this day of 19

J u d g e.

FORM NO: 6.

Order appointing a Receiver.

Section 18.

(Title).

Whereas A. B. was adjudicated an insolvent by order of this Court, dated and it appears to the Court that the appointment of a Receiver for the property of the insolvent is necessary:

It is ordered that a receiving order be made against the insolvent and a receiving order is hereby made against the insolvent and A. B. of (or the Official Receiver) is hereby constituted Receiver of the property of the said insolvent.

And it is further ordered that the said Receiver (not being the Official Receiver) do give security to the extent of and that his remuneration be fixed at

Dated this day of 19

J U D G E

FORM NO: 7.

Proof of Debt.

General Form.- Section 25.

(Title)

In the matter of

No. (a) of 19

I, of (b) make oath and say (or solemnly and sincerely affirm and declare)-

That the said ~~was~~ were, at the date of the petition viz., the day of 19 and still ~~is~~ are justly and truly indebted to me in the sum of Rs as. P. for (c) as shown by the account endorsed hereon (or the following account), viz., for which sum or any part thereof I say that I have not, nor hath any person by order to my knowledge or belief for use had or received any manner of satisfaction or security whatsoever save and except the following (d):-

(a) Here insert number given in the notice.

(b) Address in full.

(c) State consideration and specify the vouchers (if any) in support of the claim.

(d) Here details of securities, bills or the like.

Admitted to vote for Rs

Judge or Official Receiver

Sworn at this day of before me

Deponent's Signature.

(Signed) X. Y.,

Designation.

FORM NO: 8.

Proof of debt of workmen.

(Title).

I (a) of (b) make oath and say:- (or solemnly and sincerely affirm and declare)-

That (c) ~~was~~/~~were~~ at the date of the adjudication, viz., the day of ~~am~~/~~is~~/~~are~~ 19 and still justly and truly indebted to the several persons whose names, addresses and descriptions appear in the schedule endorsed hereon in sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in (d) in respect of services rendered by them respectively to (e) during such periods before the date of the receiving order as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

(a) Fill in full name, address and occupation of deponent

(b) The abovenamed debtor or the foreman of the abovenamed debtor or on behalf of the workmen and others employed by the above named debtor.

(c) "I" or "the said".

(d) "My employ" or "the employ of the abovenamed debtor"

(e) "Me" or "the abovenamed debtor"

Admitted to vote for Rs this day of

Judge or Official Receiver.

Sworn at

before me

Deponent's Signature.

(Signed) X. Y.,

Designation.

FORM NO: 9.

Notice to creditors of the date of consideration of a composition or scheme of arrangement.

Section 27.

(Title).

Take notice that the Court has fixed the day of 19 for the consideration of a composition (or scheme of arrangement) submitted by A, B, the debtor in the above insolvency petition No creditor who has not proved his debt before the aforesaid date will be permitted to vote on the consideration of the above matter. If you desire to be represented at the abovementioned hearing you should be present in person or by a duly instructed pleader with your proofs.

Dated this day of 19

J U D G E

FORM No.10.

Form under Section 27(2).

List of creditors for use at Meeting held for consideration of composition or scheme.

(Title)

Meeting held at this day of 19

No.	Names of all Creditors whose proofs have been admitted.	Here state as to each Creditor whether he voted, and if so, whether personally or by pleader.	Amount of Assets.	Amount of admitted proof.
		Total ...		

Required number of majority.....

Required value ..... Rs

FORM No.11.

Form of Notice under Section 39 (4).

Notice to persons claiming to be creditors of Intention to declare Final Dividend.

(Title)

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of 19 or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of 19

G.H. Receiver.

(Address).

To

X. Y.

FORM No. 12.

Order Annulling Adjudication under Section 42.

(Title)

On the application of R.S., of and on reading and ~~after~~ hearing it is ordered that the order of adjudication dated against A.B., of be and the same is hereby annulled.

Dated this day of 19

J u d g e .

FORM No. 14.

Order of discharge subject to conditions as to earnings, after-acquired property, and income.

Section 44(a), (b) or (c).

(Title)

On the application of ....., adjudged insolvent on the day of 19 and upon taking into consideration the report of the Official Receiver (or Receiver) as to the insolvent's conduct and affairs and hearing A.B. and C.D. creditors :

It is ordered that the insolvent

(a) be discharged forthwith; or

(b) be discharged on the....., or

(c) be discharged subject to the following conditions as to his future earnings, after-acquired property and income :-

After setting aside out of the insolvent's earnings, after-acquired property, and income, the yearly sum of for the support of himself and his family, the insolvent shall pay the surplus, if any (or such portion of such surplus as the Court may determine), of such earnings, after-acquired property, and income to the Court or Official Receiver (or Receiver) for distribution among the creditors in the insolvency. An account shall, on the 1st day of January in every year, or within 14 days thereafter, be filed in these proceedings, by the insolvent, setting forth a statement in his receipts from earnings, after-acquired property, and income during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the insolvent into Court or to the Official Receiver (or Receiver) within 14 days of the filing of the said account.

Dated this ..... day of 19

J u d g e .

FORM No. 15.

Summary Administration.- Section 48.

(Title)

Notice to creditors.

Take notice that on the day of 19 the abovenamed debtor presented a petition to this Court praying to be adjudicated an insolvent and that on the day of 19 this Court being satisfied that the property of the debtor is not likely to exceed ₦500, directed that the debtor's estate be administered in a summary manner and appointed the day of 19 for the further hearing of the said petition and the examination of the said debtor.

Also take notice that the Court may on the aforesaid date then and there proceed to adjudication and distribution of the assets of the aforesaid debtor. It will be open to you to appear and give evidence on that date. Proof of any claim you desire to make must be lodged in Court on or before that date.

Given under my hand and the seal of the Court, this ..... day of 19

Seal.

Judge.

Making certain enquiries regarding the draft rules under the Assurance Regulation 31

G. R. S. 26]

File No. 339 of 1912-13

Serial No. 2

Diary No. of letter replied to

No. 3209

General and Revenue Secretariat

( )

, *the* 191 .

To

The Registrar,

Chief Court

Date of issue 22nd July 13

Sir,

Signed by Mr SP Rajagopala Chari

Adverting to your letter no. 4222/326 of the 12th June 1913, forwarding for sanction of Govt a set of rules framed by the Chief Court under Sec" 57 of the Mysore Insurance Regulation, I am directed to enquire

1) Whether Rule X is necessary in view of the provisions contained in Sec" 23 of the Regulation they

P.T. over.

SUBJECT.

S2

2) Whether Rule XXXI (4) making provision for the deposit of Rs 150/- by a creditor is right in principle & whether it is not ultra vires, as the Insolvency Regn is silent unlike the Civil Pro. Code, does not make any such provision

3) Whether Rule XXXII making provision for a partial application of the principle of res judicata is valid., the Regulation itself creating no bar of res judicata

The favour of an early reply is requested.

I have te

Sd/
for Secy to Govt.

Lg. - 129
17/7/13 18/7/13

List of enclosures.

Copied by 21/7

Examined by

GPB—25,000—8-8-11.

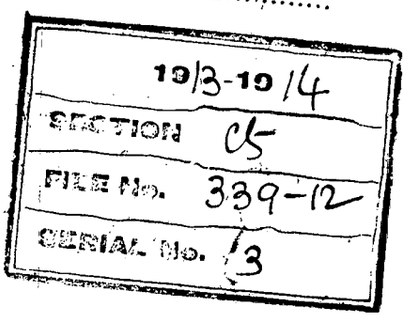
No. 1340
209

B A N G A L O R E ,

16th September, 1913.

17

J DIARY No. 1005



From

The Registrar of the
Chief Court of Mysore.

To

The Secretary to Government,
General and Revenue Departments.

S i r ,

In reply to your letter No. J209/Cts.339-12-2 dated the 23rd July 1913, making certain enquiries with reference to the - rules framed by this Court under section 51 of the Mysore Insolvency Regulation, I am directed to state as follows./ -

2. Section 23 of the Regulation states in general terms that, where no Receiver is appointed, the court may exrecise the powers of a Receiver. It does not specifically provide for a - matter of detail, like that contained in draft Rule X, in regard to the preparation of a deed of sale of ø immoveable property, a about which subordinate courts may entertain a doubt. In the absence of such a rule it might be contended, for instance, that - the deed, being one executed by the court as a public authority

representing

34

representing the Government, was exempt from stamp duty; and, as a matter of fact, under the law of insolvency in force in the - Presidency towns conveyances prepared before or under order of - an Insolvency court are exempt from stamp duty. (Section 75 of the Indian Insolvency Act. Cf. also section 144 of the English - Bankruptcy Act 1890).

Page 310 of Chariar's book

3. Draft Rule XXXI clause (4), in regard to the deposit of a lump sum to cover expenses, was inserted on the analogy of the Bombay Rules (Vide rule No. XXVII), partly by way of precaution and partly to obviate delays. But on further consideration, the Chief Court are inclined to think that the provision is not indispensable and that it may be omitted.

4. Rule XXXII is in the opinion of the Judges necessary in order to make it clear, on the one hand, that the dismissal of an insolvency petition does not altogether bar a fresh petition if good grounds exist for presenting it, and on the other hand, that the court is not bound to entertain it unless it is satisfied that such grounds exist. This is in accordance with the - principle adopted by the law of Bankruptcy in England, which recognises that "it is a necessary incident of bankruptcy jurisdiction that a court which exercises it should have power to rehear a case which it has decided and to review and vary its orders,"

but

35

but that at the same time "where a person asks for a rehearing of a former order, he should make out a prima facie case, which the other side need not answer till the court has decided that there are prima facie grounds for granting a rehearing" and that "an application for a rehearing should not as a general rule, except in cases of clear mistake, be founded on the same materials as were previously before the court." (Vide Halsbury's Laws of England, Vol 2, pages 308 to 310.)

As regards the omission by the Regulation to create any bar of res judicata, I am to observe that the matter is not altogether one of legislative enactment, but that even on general principles of law courts do recognise as far as possible the expediency of discouraging the tendency to re-agitate the same matter in order to prevent litigation from being indefinitely protracted. (Compare the observations of the Privy Council in 6 All. 269 at page 274.) The draft rule is not therefore, in the opinion of the Chief Court, invalid on the ground alluded to. At the same time it is thought that the rule may with advantage be redrafted as follows :

"XXXII. No fresh petition by a debtor whose insolvency petition has been dismissed shall be entertained by the court unless the petitioner satisfies the court that he

had

Sanctg rules under the Insolvency Regn

37

G.R.S. 28]

Diary No. of letter replied to

GENERAL AND REVENUE SECRETARIAT.
( )

the 191

Date of issue 17/1/14

Signed by W P S Rajagopalachar

Encl no. 1

CS File No. 339 of 1912-13

Serial No. 4

Proceedings of the Government of His Highness the Maharaja of Mysore

READ—

Letter no. 4222/326, dd 14th 12 June 1913, from the Registrar, Chief Court, forwarding for the sanction of Govt a set of draft rules made by the Chief Court under Sec 57 of the Mysore Insolvency Regulation

ORDER THEREON.—No.

2) Correspondence ending with letter no 1340/109 dd 16th Sepr 1913, from the Same Officer furnishing information on certain

P.T.O.

SUBJECT.

38

enquiries made with xfee to

Rules X, XXXI (4), & XXXII.

Order thereon - no. J 2012.

Govt are pleased to sanction

the rules as revised and amended

by the Chief Court. They may

be duly published and brought

into force with effect from the

1st Feb 1914.

Draft 23/12

For Secy to Govt 22.XII.13

To The Registrar, Chief Court. Intd a

Reg-116 Copy of the rules as finally approved

20/12/13

22

No. 2844/235

39

Bangalore, Dated 21st January 1914.

222
J 2250

From

V.A. Rajaratna Mudaliar, Esquire,
Registrar, Chief Court of Mysore.

Cts 339-12-5

To

K.R. Sreenivasa Iyengar, Esquire, M.A.,
Secretary to the Government of Mysore,
General and Revenue Departments.

Sir.

Adverting to Proceedings of Government No.J.2012/Cts.339-12-4 dated the 17th Instant, according sanction to the rules framed by this Court under the Mysore Insolvency Regulations and directing that they should be brought into force with effect from 1st February 1914, I am directed to state that in anticipation of the approval of Government the date of operation of the rules has been fixed as 1st March 1914 to permit of their previous publication in the Mysore Gazette.

I have the honour to be,
Sir,
Your most obedient servant,

Registrar.

A.V.

1/2 Approving the Police Commr's action in having postponed the date of operation of the rules under the Arms Act 40

G.R.S. 28]

3/2 Apld

Ct File No. 339 of 191

Serial No. 6

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.

( )

READ—

the P 191

Govt Procg no. J 2012/CS-339-12

dy the 17th Jan 1914, sanctioning the rules framed by the Chief Commr under Sec 5 of the Mysore Arms Act and directing that they

Date of issue 6/2/14

Signed by S. Rajagopalachari

for Registrar

ORDER THEREON.—~~No.~~

may be duly published and brought into force with effect from the 1st Feb 1914

Paper under disposal

2) Letter no 2844/235 dy the 21st Jan 1914 from the Registrar,

Over.

SUBJECT.

4

Chief Court, Statistical Branch,

Anticipation of the approval

of Govt, the date of operation of

the rules has been fixed as 1st Mar 1914

to permit of their previous publication

in the Myme Gazette.

Order thereon - No. J2224 of 6-2-14
Cb33972

The action taken by

the Chief Court in postponing

the ~~date of~~ operation of the rules

from the 1st Feb 1914 to the 1st Mar 1914

is approved.

Sd

Sr Secy to Govt

To The Registrar, Chief Court

31/1/14

Cy-116

30/1/1914

Exd HC

GPB—20,000—2-10-11